SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IOMARTCLOUD, INC.

                   Plaintiff,

      – against –

CASE WESTERN RESERVE UNIVERSITY,

                 Defendant.

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Index No.  650879/2019

Date Purchased:  February 11, 2019

**SUMMONS**

Plaintiff designates New York
County as the place of trial.

Basis of venue is CPLR § 503(a)

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if the summons is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
       February 11, 2019

SULLIVAN & WORCESTER LLP


By: /s/Michael T. Sullivan
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*Attorneys for Plaintiff IomartCloud, Inc.*

To:

Case Western Reserve University
10900 Euclid Avenue
Cleveland, OH  44106

*Defendant*

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**COMPLAINT**

Plaintiff IomartCloud, Inc. ("iomart"), by its undersigned attorneys, for its Complaint against defendant Case Western Reserve University, alleges as follows:

## NATURE OF ACTION

1.     iomart is a provider of data storage and cloud computing services, and defendant was one of its customers. This breach of contract dispute concerns defendant's failure to pay for data storage above and beyond a monthly base amount during the period July 1, 2015 through June 30, 2016.

## JURISDICTION AND VENUE

2.     This Court has personal jurisdiction over defendant because, in Article 14 of the MSA, defined below, defendant (i) agreed "that any claims or disputes arising out of or relating" to the MSA (defined below) "shall be governed by the laws of New York" and (ii) "consent[ed] to the exclusive jurisdiction and venue in the federal and state courts of the State of New York in connection with any dispute or other matter arising out of this [MSA]."

3.     Venue is proper in this County pursuant to CPLR 503(a) because neither iomart nor defendant resides in the State, and iomart has designated this County as the place of trial.

## THE PARTIES

4.      iomart is a corporation formed under the laws of Florida, with its principal place of business located in Vero Beach, Florida.  iomart is a wholly owned subsidiary of Iomart Group PLC, a company organized in Scotland under the laws of the United Kingdom.

5.      Upon information and belief, defendant is a corporation for non-profit formed under the laws of Ohio, with its principal place of business located in Cleveland, Ohio.

## FIRST CAUSE OF ACTION:
### Breach of Contract

6.      iomart and defendant started their business relationship in or about 2013 when iomart acquired certain business lines from non-party SHI International Corp.

7.      The most recent iteration of the parties' relationship began on or about July 1, 2015, when iomart and defendant entered into an agreement entitled "Backup as a Service Partnership with EMC" (the "2015-16 Order"), pursuant to a Master Services Agreement ("MSA").

8.      Under the 2015-16 Order, iomart was to provide defendant with certain cloud-based data storage services over a one-year period starting July 1, 2015.  In return, defendant was to pay iomart a base monthly charge, plus overage charges for any data used in excess of a certain base amount.

9.      The 2015-16 Order stipulated a base monthly charge of $17,600 for a quantity commitment of 80 terabytes ("TB") of data (the "Base Usage").  Exhibit A to the MSA provided for "overage charges," which would be applied to any capacity usage exceeding the 80TB of data (the "Overage Charge").  The Overage Charge was set at $0.45 per gigabyte ("GB").

10.      iomart fully performed under the 2015-16 Order, including by providing defendant with cloud-based data storage services.

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11.     During the term of the 2015-16 Order, defendant used data in excess of the Base Usage. This resulted in Overage Charges of $541,105.46 (1,202,456.7 GB *$0.45).

12.     iomart has invoiced defendant for the full $541,105.46 of Overage Charges, yet defendant has refused to pay.

13.     By refusing to pay the $541,105.46 in Overage Charges, defendant has breached the MSA and the 2015-16 Order thereunder.

14.     In compliance with Article 14(B) of the MSA, iomart presented defendant with a concise statement of iomart's claim for the overage charges and the data supporting that claim.

15.     In compliance with Article 14(C) of the MSA, iomart and defendant's Contract Representatives, as defined in the MSA, used their best efforts to negotiate a settlement. Those efforts were unsuccessful.

16.     In compliance with Article 14(C) of the MSA, iomart and defendant engaged in a mediation before the American Arbitration Association, on or about October 18, 2017, in an attempt to negotiate a settlement. Those efforts also were unsuccessful.

17.     In compliance with Article 14(D) of the MSA, on or about January 14, 2019, iomart provided defendant with written notice that it intended to commence this action against defendant for breach of the MSA and 2015-16 Order thereunder.

18.     By reason of defendant's breach, iomart has been damaged in an amount to be determined at trial, but in no event less than $541,105.46.

19.     Article 14(E) of the MSA provides that: "The prevailing Party in any dispute and/or legal action brought hereunder shall also be entitled to recover all reasonable out of pocket costs and expenses (including, but not limited to, reasonable court costs and attorneys' fees) incurred as a result thereof."

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## ALTERNATIVE CAUSE OF ACTION:
### Quantum Meruit

20.     From on or about July 1, 2015 through on or about June 30, 2016, iomart provided defendant with cloud-based data storage services in good faith.

21.     Defendant accepted those cloud-based data storage services.

22.     iomart expected compensation for its provision of cloud-based data storage services to defendant.

23.     Defendant failed to pay the full reasonable value of the cloud-based data storage services.  The unpaid balance of the reasonable value of the services is equal to $541,105.46.

24.     Defendant therefore owes iomart $541,105.46.

## DEMAND FOR RELIEF

WHEREFORE, plaintiff IomartCloud, Inc. respectfully prays that this Court enter judgment in its favor and against defendant Case Western Reserve University, either on its Breach of Contract Cause of Action, or alternatively, on its Quantum Meruit Cause of Action, awarding (i) iomart damages in an amount to be determined at trial, but in no event less than $541,105.46, plus interest to the maximum extent permitted by law, along with iomart's out of pocket costs and expenses, including, but not limited to, court costs and attorneys' fees, in this action, and  (ii) such other and further relief as this Court may deem just and proper.

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Dated: New York, New York
        February 11, 2019                    **SULLIVAN & WORCESTER LLP**

                                    By: /s/Michael T. Sullivan
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                                    *Attorneys for Plaintiff IomartCloud, Inc.*

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